

**FILED**UNITED STATES DISTRICT COURT  
ROSWELL, NEW MEXICO

## UNITED STATES DISTRICT COURT FEB 06 2023

for the  
District of New MexicoMITCHELL R. ELFERS  
CLERK OF COURTIn the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)

Zachary Ray GONZALES

Case No. 23-MR-269

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A

located in the \_\_\_\_\_ District of \_\_\_\_\_ New Mexico \_\_\_\_\_, there is now concealed (identify the person or describe the property to be seized):

See Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;  
☐ contraband, fruits of crime, or other items illegally possessed;  
☐ property designed for use, intended for use, or used in committing a crime;  
☐ a person to be arrested or a person who is unlawfully restrained.

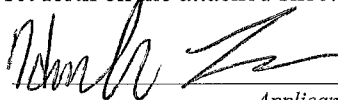
The search is related to a violation of:

| Code Section            | Offense Description  |
|-------------------------|--|
| Title 18 USC, 922(g)(1) | Possession or Receipt of a Firearm, or Ammunition by a Convicted Felon |

The application is based on these facts:

See Affidavit Attachment

- ☒ Continued on the attached sheet.  
☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

Humberto Loya, Task Force Officer, ATF

Printed name and title

Sworn to before me and signed in my presence.

Date: 2/6/23



Judge's signature

City and state: Roswell, New Mexico

Barbara Evans, United States Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

I, Humberto Loya, being first duly sworn, hereby depose and state as follows:

**INTRODUCTION AND BACKGROUND OF THE AFFIANT**

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure (FRCP) for a warrant to obtain a deoxyribonucleic acid (DNA) sample, by way of buccal swab, from Zachary Ray GONZALES for laboratory analysis. I believe GONZALES's DNA may be present on a firearm located during the execution of a District Court state search warrant on March 20, 2022. The search warrant was executed on a 2005 Maroon GMC YUKON XL that GONZALES's was driving and was the sole occupant of at the time of the traffic stop.

2. I am a Task Force Officer (TFO) with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and have been so employed since July of 2022. I am currently assigned to the Las Cruces Field Office and specifically to the Roswell Satellite Office, which is involved in various facets of ATF's enforcement programs. I am also a full-time Law Enforcement Officer employed with the Roswell Police Department and have been since June 2015. I am currently assigned to the Criminal Investigations Division as a Detective. I am a graduate of the New Mexico Law Enforcement Academy and have over seven years of law enforcement experience. I have also had classroom and on the job training conducting investigations in violent crimes, homicides, crimes against children and sexual assaults which have resulted in felony arrests and convictions.

3. The statements contained in this affidavit are based on my investigation, training, experience, familiarity with the ongoing investigation into GONZALES, information obtained during the March 20, 2022 search warrant, review of court records, and information obtained from other law enforcement officers.

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

4. This affidavit is intended to show merely there is sufficient probable cause for the requested search warrant and does not set forth all of my knowledge about this matter. Therefore, I have set forth relevant background information and only the facts that I believe are necessary to establish probable cause to believe that GONZALES possessed a firearm in violation of 18 U.S.C. § 922(g)(1). I submit this affidavit supports probable cause for a warrant to search the person of Zachary Ray GONZALES and seize a DNA sample, by way of buccal swab.

**FACTS AND CIRCUMSTANCES ESTABLISHING PROBABLE CAUSE**

5. On Saturday March 19, 2022, at approximately 5:34 p.m., Deputy Martinez with the Lea County Sheriff's Office ("LCSO") attempted to conduct a traffic stop on a 2005 Maroon GMC YUKON XL bearing temporary license plate number 32T5261 at an intersection in Hobbs, New Mexico. According to Deputy Martinez, the driver of the vehicle failed to stop and continued driving. A couple of blocks later, the vehicle eventually came to a stop.

6. LCSO Investigator Brown was directly behind Deputy Martinez when the traffic stop was initiated and observed that the suspect vehicle traveled approximately 1.1 miles before coming to a stop. The traffic stop was initiated due to Investigator Brown looking for GONZALES on an active arrest warrant for First Degree Murder.

7. Investigator Brown observed who he knew to be GONZALES get out of the driver's seat of the vehicle. GONZALES was then placed under arrest by deputies on the active arrest warrant. GONZALES was the sole occupant of the vehicle.

8. Due to GONZALES being placed under arrest, Deputy Hayes attempted to contact the registered owner of the vehicle, however, he learned the vehicle had been sold and there was no contact information available. Accordingly, because GONZALES had just been placed under arrest, the vehicle was towed pursuant to LCSO policy.

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

9. Also pursuant to LCSO policy, Deputies Martinez and Hayes conducted an inventory of the vehicle to document its contents. During the vehicle inventory, Deputy Hayes observed a silver handgun next to the rear passenger seat of the vehicle. The deputies had prior knowledge that GONZALES was a convicted felon, so the inventory of the vehicle was stopped, and the vehicle was secured pending a search warrant.

10. On Sunday, March 20, 2022, Investigator Brown obtained a District Court Search Warrant for the 2005 Maroon GMC YUKON XL bearing temporary license plate number 32T5261.

11. During the execution of the search warrant on March 20, 2022, a silver in color Raven Arms MP-25 bearing serial number 785922 was located on the rear passenger side floorboard. Investigator Brown observed that the firearm had the barrel, slide, and frame; however, the firing pin and magazine were missing. Despite the fact that the firing pin and magazine were missing, I know based on my training and experience, that the handgun meets the definition of a “firearm” pursuant to 18 U.S.C. § 921(a)(3) because the weapon “is designed to or may readily be converted to expel a projectile by the action of an explosive.”

12. Investigators also located two credit cards belonging to GONZALES along with a black Samsung phone on the rear driver side passenger’s seat.

13. I reviewed GONZALES’ criminal history, which showed the following felony convictions:

- a. April 8, 2015: Convicted of unlawful taking of a motor vehicle (4<sup>th</sup> degree felony), and sentenced to one year, four months, twenty-nine days of supervised probation out of the Fifth Judicial District Court, Case No. D-506-CR-2014-00761.

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

- b. April 8, 2015: Convicted of possession of a controlled substance (4<sup>th</sup> Degree Felony), and sentenced to one year, five months, twenty days of supervised probation out of the Fifth Judicial District Court, Case No. D-506-CR-2014-00646.
  - c. May 13, 2019: convicted of Receipt, transportation, or possession of a firearm or destructive device by certain persons, and two counts of possession of a controlled substance, and sentenced to one year incarceration at the New Mexico Department of Corrections out of the Fifth Judicial District Court, Case No. D-506-CR-2018-00201. This case had a one-year habitual offender enhancement.
  - d. May 13, 2019: Convicted of receipt, transportation, or possession of a firearm or destructive device by certain persons, distribution, or possession with intent to distribute marijuana (4<sup>th</sup> degree felony), and sentenced to one year incarceration at the New Mexico Department of Corrections out of the Fifth Judicial District Court, Case No. D-506-CR-2019-00194.
  - e. May 13, 2019: Convicted of possession of a controlled substance (4<sup>th</sup> degree felony), tampering with evidence (4<sup>th</sup> degree felony), and sentenced to one year incarceration at the New Mexico Department of Corrections out of the Fifth Judicial District Court, case No. D-506-CR-2019-00226.
14. Additionally, on January 31, 2023, I confirmed with ATF Special Agent Russell Davis, who has been trained by the ATF and recognized by the District of New Mexico as an expert in relation to Interstate NEXUS determinations of firearms and ammunition, that the firearm involved in this investigation was manufactured in the state of California and therefore traveled in interstate commerce.

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15. Based on my training and experience, I am aware forensic evidence may remain on, or within, items, for years after an event. It is my understanding that significant contact between an object and a handler may result in DNA transfer. The firearms will be submitted for DNA analysis and will be compared to GONZALES's sample to determine if any of the DNA obtained from the firearms contain GONZALES's DNA.

**CONCLUSION**

16. Based on the above information, I believe there is probable cause to believe GONZALES possessed a firearm in violation of 18 U.S.C. § 922(g)(1) – Felon in Possession of a Firearm. Therefore, I submit this affidavit supports probable cause for a warrant to search the person of Zachary Ray GONZALES and seize a DNA sample, by way of buccal swab.

17. The warrant was reviewed and approved by Assistant United States Attorneys Ry Ellison.

18. This affidavit is true and correct to the best of my knowledge.

Respectfully submitted,



Humberto Loya  
Task Force Officer  
Bureau of Alcohol, Tobacco, Firearms and Explosives

Subscribed and sworn to before me this 6<sup>th</sup> day of February 2023

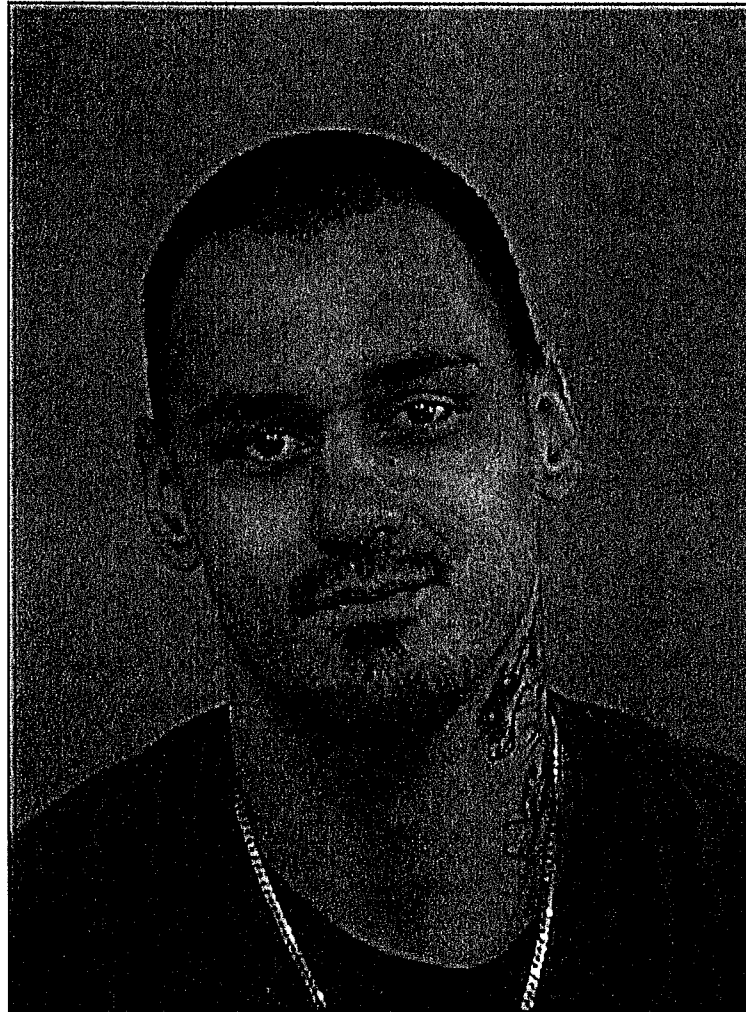


THE HONORABLE BARBARA EVANS  
UNITED STATES MAGISTRATE JUDGE

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

**ATTACHMENT A  
PERSON TO BE SEARCHED**

1. Zachary Ray GONZALES, whose photo is below, for the limited purpose of obtaining a DNA sample.



**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

**ATTACHMENT B  
ITEMS TO BE SEIZED**

1. DNA sample, via buccal swab, from Zachary Ray GONZALES.